

3                   CHAIRMAN KHOURI: One o'clock we can  
4 reconvene. Madame Secretary if you would proceed  
5 with our next panel.

6                   MS. DICKON: Will do, just one  
7 housekeeping manner. When you're not speaking, if  
8 you could turn the microphone off that would help  
9 us avoid some feedback problems we were having  
10 this morning. Thank you.

11                  Your second panel, Mr. Chairman, will  
12 begin with Peter Friedmann, followed by Steven  
13 Hughes, Sam Sorbello, Tim Avanzato, and Frans De  
14 Jong. Mr. Friedmann, go ahead.

15                  MR. FRIEDMANN: Good afternoon,  
16 Commissioners and thank you very much for  
17 conducting this proceeding. This is clearly  
18 something that is challenging the entire gamut of  
19 the organization and entities over which you have  
20 jurisdiction. I'm going to talk to in behalf of  
21 the U.S. agriculture and forest products  
22 exporters, their freight forwarders and customs

1 brokers, the truckers, all those who are members  
2 of the Ag TC which is the entire agriculture and  
3 forest products supply chain. It's an export  
4 supply chain.

5 We need to move our agriculture, forest  
6 products exports rapidly through the entire supply  
7 chain because there's nothing that we produce in  
8 agriculture and forest products -- which is the  
9 largest containerized cargo going out of the  
10 United States -- there's nothing we produce here  
11 in the United States that cannot be sourced  
12 somewhere else in the world. And if we're not  
13 dependable suppliers, we've learned the hard way;  
14 those foreign customers will go somewhere else.  
15 There's plenty of other places that can buy --  
16 Korea, Japan, they can buy their pork and beef  
17 from a lot of other places other than South Dakota  
18 or Kansas or Wisconsin, all those places.

19 So when you hear some of the responses  
20 and read some of the responses, I was frankly  
21 disappointed by the responses for the other side.  
22 This is not black and white. This isn't something

1       where anybody, any carrier, or any terminal can  
2       say there's no problem here. There's no problem  
3       here? That's not what the pork producers are  
4       telling Chairman Thume right now. That's not what  
5       the lumber exporters are telling senators from  
6       Kentucky or Washington State or elsewhere. This  
7       is a problem because it impacts our ability to  
8       export.

9               Now, keep in mind. Nobody, no exporter  
10       and no importer want to keep their cargo on a  
11       terminal one minute longer than they absolutely  
12       have to. There's a view that maybe people like to  
13       store things there. No. And here's an example,  
14       you can take chilled pork out of South Dakota and  
15       send it to Korea after the United States has spent  
16       years trying to negotiate an opening market in  
17       Korea and in China for our pork and our beef  
18       exports. If it's chilled, which means it's not  
19       frozen it's chilled, it gets over there and it's  
20       worth about \$225,000, that's the base face value  
21       sale over in Korea.

22               If there's any delay, any delay along

1       that supply chain way and at the ports, there's  
2       only one choice, to turn the temperature down and  
3       freeze it. And then you deliver a product from  
4       which you're going to get \$50,000. That's a  
5       massive loss to the U.S. exporter when there's any  
6       delay. So the carriers and the terminal operators  
7       do not need to convince the importers and  
8       exporters to move their cargo faster through. To  
9       the contrary, we want them to move our cargo  
10      through quickly.

11               So there's definitely a problem here.  
12      Some of the responses you heard; you don't have  
13      the authority? Come on. Give me a break. That's  
14      exactly what some of the same people who wrote  
15      those same petitions, the same briefs that they  
16      gave you on this one, that's what they said on the  
17      SOLAS VGM, verified gross mass. They said you  
18      didn't have the authority, you can't move on it.  
19      Well, you didn't; until the U.S. Coast Guard  
20      stepped in and then the Congress stepped in  
21      because they said that there was a problem and we  
22      are going to fix it.

1                   And I think this agency has the  
2           authority to step in and fix and I think this  
3           agency to self-initiate. You've heard from the  
4           whole gamut. This isn't something that was just  
5           when people say this is a commercially negotiated  
6           item. You've heard from Wal-Mart, so okay, only  
7           retailers that are smaller than Wal-Mart are  
8           impacted by this, which means everybody in the  
9           United States. We have as a member, the nation's  
10          largest trucking company paid almost 4 million  
11          dollars worth of these fees; they didn't have the  
12          ability to negotiate. So the fact is that the  
13          industry is depending on this agency to do what  
14          the Shipping Act calls you to do. I hate to admit  
15          it but I was around in 1984 and I was a senate  
16          draftsperson of this Act.

17                 You need to protect the shipping public.  
18          That's the purpose of this agency, is to protect  
19          the American shipping public because things aren't  
20          an even playing field and when you talk about  
21          selecting terminals things are moving in a  
22          different direction. Used to be three carriers,

1       you picked the carrier because you liked the  
2       terminal they called on, but now those three  
3       carriers are on one ship as part of an alliance,  
4       right? And that one ship, that one alliance ship  
5       calls on one terminal, so you no longer have as  
6       much ability to select the terminal based on their  
7       practices.

8               I would say this, there are people --  
9       I'll finish up here, I could pull six people out  
10      of the group of witnesses that you have assembled,  
11      including three that will testify tomorrow  
12      probably against the Commissioner doing anything,  
13      and I believe you could pull those six people  
14      together and get a solution. Just like we did on  
15      VGM. We had some terminal operators, private  
16      terminal operators, who said forget what the  
17      lawyers are telling you that we can't do anything.  
18      They came forward and we found a solution. I  
19      think some of the carrier representatives know  
20      what the solution is on this and it's not just  
21      telling you, stay out of this area. There are  
22      some solutions here.

1                   And finally, to Chairman Khouri, you  
2           said something that really resonated with me, we  
3           found that the people, the ocean carrier  
4           representatives and terminal representatives that  
5           are closest to the cargo, that have the closest  
6           relationship to the shippers, they understood how  
7           unfair and inappropriate these detention demurrage  
8           and per diem charges were. They were  
9           flabbergasted because they know the injury that  
10          was imposed by the delays at the ports and  
11          congestion to their customers, the shippers.

12                   And then on top of that, with loss  
13          sales, damaged cargo, and so forth, on top of that  
14          being assessed penalties that were outrageous. If  
15          it cost \$600 freight to move hay across the ocean  
16          and you're collecting demurrage if you're a  
17          carrier at \$185 a day, hey what's the hurry, keep  
18          it going, right? I mean there is a financial  
19          incentive. Hopefully the carriers don't do that,  
20          they want to move things across, but the damage is  
21          significant.

22                   And there are people closest to the

1 cargo, working for the carriers that I believe  
2 think a policy by the Commission, and they'll  
3 never say it, but a policy by the Commission that  
4 would encourage upper management, maybe not just  
5 here in the United States being a problem, but  
6 upper management overseas to understand that they  
7 have to treat their customers differently on this  
8 issue. Thank you.

9 MR. HUGHES: On behalf of the Auto Care  
10 Association, my name is Steve Hughes of HCS  
11 International. I welcome this opportunity to  
12 provide testimony of how incidents of port  
13 operations and severe congestion at container  
14 terminals here in U.S. ports have affected our  
15 membership, their customers, and how a policy  
16 statement on fair and reasonable demurrage and  
17 detention business practices will benefit our  
18 industry.

19 The Auto Care Association as nearly  
20 3,000 member companies and affiliates that  
21 manufacture and distribute and sell motor vehicle  
22 parts, accessories, tools, equipment, and



1 services. Our member companies operate or  
2 otherwise represent more than 150,000  
3 manufacturing facilities, repair shops, parts  
4 stores, and distribution outlets.

5 U.S. auto care industry employs 4.6  
6 million people, 3.2% of our workforce, and it  
7 accounts for more than 2% of the nominal GDP. The  
8 integrated grid of companies and organizations is  
9 dedicated to providing -- this keeps moving too  
10 fast, I'm sorry. I apologize. Providing quality  
11 parts, products, vehicle service and repair for  
12 all 278 million cars and trucks on our U.S. roads  
13 today.

14 It's estimated that 226 billion dollars  
15 of auto parts float through our ports during 2017  
16 in imports and exports. Over recent years our  
17 members have reported issues at our U.S. ports  
18 including port congestion caused by labor strife,  
19 ocean carrier bankruptcy, inclement weather, and  
20 or other substantial changes made by marine  
21 terminals and carriers affecting their ability to  
22 process containers efficiently. These

1       circumstances are beyond our members' controls and  
2       prevent them from picking up cargo or returning  
3       empty containers in a prompt and efficient manner.

4               The 2014 2015 West Coast labor  
5       negotiations were the most disruptive, causing  
6       significant delays in the flow of imports and  
7       exports through tightly integrated global supply  
8       chains. Many firms had to expand additional  
9       resources to find solutions, modify supply chains,  
10      or divert shipments to other ports. In addition,  
11      the Hanjin bankruptcy in 2016 left cargo stranded  
12      at sea while dozens of ships were denied access to  
13      ports.

14             More importantly, while these are the  
15      bigger cases, our membership experiences issues on  
16      virtually a daily basis, which cause them to be  
17      unnecessarily charged demurrage or detention. Our  
18      drayage partners are doing a good job of eliciting  
19      the various causes. Regardless of the reasons,  
20      our members have excessive detention and demurrage  
21      penalties due to circumstances that they could not  
22      have foreseen and could not control. Many of our

1 members are small and medium sized firms that do  
2 not have the ability or volume to negotiate  
3 reasonable terms or effective solutions to resolve  
4 demurrage and detention charges associated with  
5 these issues.

6 And until recently, very few of our  
7 members were even aware of your CADRS department  
8 or it's ability to act as an intermediary to help  
9 in this type of situation. Consequently, these  
10 companies are forced to absorb these unfair and  
11 unreasonable costs across what continues to become  
12 thinner and thinner profit margins in our  
13 industries. In essence our members negotiate what  
14 they believe to fair and competitive freight rates  
15 with their NVOCC or carrier, only to find out that  
16 their charged a fee at the destination terminal  
17 for something that they have no control over. As  
18 a result, the competitive freight rate that they  
19 negotiated and calculated into their costs at  
20 selling prices is a false number when they get  
21 blind-sided by unreasonable and unfair charges.

22 To be clear, we're not looking for

1 demurrage and detention charges to go away. On  
2 the contrary, we understand the absolute necessity  
3 of these fees to maintain the velocity of cargo  
4 through the ports and terminals and to prevent bad  
5 players from taking advantage of the system. What  
6 we are looking for is simply to be treated fairly  
7 when we as BCOs and our drayage partners are  
8 prevented from picking up our containers by  
9 circumstances that are well beyond our control.

10 Let's consider an example that will  
11 probably hit home with everybody. Let's assume  
12 you order something from Amazon, they charge you  
13 for the goods and the freight, and you're happy  
14 and ready to receive your order. Amazon processes  
15 your order and hands it off to FedEx for delivery,  
16 while you're waiting for the shipment FedEx has an  
17 internal problem and delays your shipment for a  
18 period of time. When they're finally ready to  
19 deliver your shipment, they demand that you pay a  
20 fee to cover their cost of their own internal  
21 issues that caused the delay. I don't see where a  
22 reasonable mind would consider this a fair and

1 just business practice.

2           Consequently, we feel that the practices  
3 of the terminals and carriers charging the BCOs  
4 and drayage companies demurrage and detention when  
5 the reason for the delay is totally out of the  
6 BCOs control, is patently unreasonable business  
7 practice. When the terminals and carriers have  
8 internal employee employer problems or issues with  
9 efficiently running their terminals that  
10 negatively effect making cargo available to their  
11 customer in an efficient and timely manner, the  
12 terminals and carriers should do what every other  
13 business does, write it off as a cost of doing  
14 business and look for ways to improve their  
15 efficiency in their own operations.

16           In conclusion, the Auto Care Association  
17 strongly supports a policy statement as proposed  
18 by the Coalition for Fair Port Practices which  
19 would ensure U.S. based companies importing and  
20 exporting the products whether they ship 20  
21 containers or 20,000 containers a year are not  
22 burdened with unfair and unreasonable demurrage

1 and detention charges. Thank you again for the  
2 opportunity to testify and I'm available to  
3 questions.

4 MR. SORBELLO: Hello, my name is Sam  
5 Sorbello. I'm the owner and President of Atlantic  
6 Coast Freezers located in Vineland, New Jersey.  
7 My company is cold storage warehouse facility and  
8 one of the largest receivers of imported meat  
9 products in the Port of Philadelphia. ACF  
10 provides USDA inspection and warehouse services  
11 for our clients, the importers of record for  
12 imported meat products.

13 In my testimony today, I'm going to  
14 focus primarily on the impact that mandatory  
15 government inspections has on these practices.  
16 ACF receives approximately 4,000 ocean containers  
17 per year of imported meat products. By federal  
18 law 100 percent of all imported meat containers  
19 are subject to inspection clearance by Customs  
20 Boarder Protection officers before they can be  
21 released from the terminal. After they are  
22 released, the products are transported to a cold

1 storage facility that is improved to inspect meat  
2 and must be inspected by USDA Food Safety  
3 Inspection Service personnel at that facility.

4           Once a container of imported meat  
5 products arrives at the I house every carton is  
6 offloaded by hand and staged in a cold storage  
7 warehouse for FSIS inspection. Each container can  
8 take three to four hours in the staging area for  
9 the most basis FSIS government inspection process  
10 and finalized. If the containers selected  
11 randomly were otherwise for intensive examination  
12 it can take several more hours for the products in  
13 the container to be inspected by FSIS.

14           In performing their mandatory inspection  
15 activities, Customs Boarder Protection officers at  
16 the port and Food Safety inspectors personnel at  
17 the I house sometimes cause delays in the release  
18 of the imported meat cargo to the importer or his  
19 agents, which is outside the control of the  
20 importer. Yet during these mandated government  
21 inspection activities the clock is running in  
22 regards to detention and demurrage free time.

1           Our industry association has established  
2     the code of practice with a number of ocean lines  
3     that provides voluntary protocols that govern this  
4     issue for imported meat products originating from  
5     Australia and New Zealand. Not all shipping lines  
6     are party to this voluntary code of practice nor  
7     does it cover originating from other countries  
8     such as South and Central America.

9           Under the current code of practice  
10    demurrage and detention expenses charged by the  
11    shipping lines are assessed four days following  
12    the day of discharge from the vessel and four days  
13    following the day of interchange respectively.  
14    There is no standard in the code of practice for  
15    the fees a shipping line may charge for detention  
16    or demurrage costs. The fees vary wildly, in some  
17    of the shipping lines charging up to \$400 per day  
18    of an empty container that has exceeded the free  
19    time allotment. This dollar amount is  
20    significantly out of line for what should be  
21    charged.

22           The purpose of these fees is to



1 encourage the importer to return the container  
2 within the allotted free time; it should not be a  
3 revenue stream for the shipping lines. This is  
4 especially true when the reason for the delay  
5 often arises from mandatory government inspections  
6 of a container in the interest of public health  
7 and safety.

8 Government inspection delays beyond the  
9 control of ACF were especially apparent during a  
10 recent pork congestion on the East Coast in 2014  
11 to 2015. Starting in 2014 throughout 2015 U.S.  
12 meat and import buying from Australia and New  
13 Zealand, Central and South America were much  
14 heavier than the past several years. The primary  
15 contributor was the labor issues taking place on  
16 the West Coast ports during the same time period.

17 In an effort to avoid the West Coast  
18 ports during that period many importers shifted  
19 their products using the East Coast ports. Import  
20 buying increased nearly 50 percent over the normal  
21 average during this period, however the government  
22 inspection activities did not likewise increase in

1 capacity as volumes increased during this period,  
2 creating a bottleneck at the government inspection  
3 points in the system.

4 Despite this delay being caused by the  
5 government inspection bottlenecks and not the  
6 actions of ACF or the importer of record the  
7 shipping lines continued to assess significant  
8 detention and demurrage fees. I would project  
9 based on the expenses charged by the shipping  
10 lines for per diems during that time period that  
11 30 percent of the total meat imports in our  
12 facility was effected purely by pork congested  
13 related to government inspections activities in  
14 2015.

15 For ACF, during 2015 we had a total of  
16 \$266,000 in per diem charges from the shipping  
17 lines. Mandatory government inspections of  
18 imported meat products is in the interest of  
19 public health and safety, shipping lines and  
20 terminal operators should not be able to assess  
21 the detention or demurrage fees to importers or  
22 their agents for delays arising for these

1 government mandated activities. Therefore I  
2 request the FMC to issue a policy statement  
3 clarifying unreasonably free time on demurrage  
4 detention and free time practices or rules that  
5 address this issue. The policy statements would  
6 reduce inefficiencies in company supply chains by  
7 removing confusion and uncertainty that exists  
8 today regarding a wildly inconsistent practice in  
9 rules of the ocean carriers and terminals during  
10 the periods of port congestion. Thank you for  
11 your time.

12 MR. AVANZATO: Thanks for having me  
13 Commissioners. I'm Tim Avanzato from Lanca Sales.  
14 I'm an exporter of approximately 5,000 containers  
15 of paper and plastic products used for the food  
16 service industry throughout the globe. You've  
17 heard plenty of great examples today of how the  
18 current system, terminal operators, team ship  
19 lines have done the shipping community wrong and I  
20 agree with all of them. But I'm going to take a  
21 little bit of a different tactic here just to kind  
22 of broaden the spectrum.

1                   Our ports and terminals have become the  
2           lifeblood of our country. The current situation  
3           is not able to be painted with one broad brush.  
4           Each port has their own authorities, an active  
5           operating authority like Savannah or Norfolk -- as  
6           I have in my own native New York jurisdiction for  
7           my business. They all have different operating  
8           house, their own climate, with or without winters,  
9           Florida versus New York, in addition each cog in  
10          the wheel have their own struggles and opinions.

11                   What's most important on this process is  
12          that we all need the proper health of the industry  
13          and not make the MTO's just a dartboard. We have  
14          to look at the industry as a whole to see what  
15          parts might be broken. And none of us wakes up in  
16          the morning to lose money so we need to look at  
17          the whole body of work.

18                   As a cargo owner I can say the winter of  
19          the 2013 was no fun in New York. I was forced to  
20          pay thousands of dollars in per diem. The  
21          cascading effect of closed days and persistent  
22          cold weather backed up the gates a the terminals

1 but it did not stop the influx of vessels and  
2 discharge of thousands of containers. As a  
3 shipper, my trucker's abilities were cut in half  
4 due to horrendous turn times and putting my  
5 shipments in the per diem.

6 I'm a 90 percent exporter, yes I'm not  
7 happy about this and do not think I should have to  
8 pay when it's not any fault of my own, but let's  
9 put the MTOs shoes on look at what they had to  
10 deal with. Massive labor shortage at the time  
11 that was working 24/7 not only doing snow removal  
12 but also handling regular responsibilities of  
13 stevedoring. Unable to add to the workloads in  
14 New York because the Water Front Commission that's  
15 outdated, restricted to hiring people. Snow and  
16 icy accumulation on the roofs and packed in the  
17 corner posts making lifting the containers  
18 difficult if not extremely dangerous.

19 Taking the winter weather issues out of  
20 the equation, let's look at the historical  
21 challenges the MTO has faced in the New York:  
22 Very high rent rates that are also incomparable,

1 APM terminals pays \$19,000 per acre while LMR pays  
2 \$17,750 per acre. Ultra large container discharge  
3 container vessel discharge 2 to 3 times more cargo  
4 than they did 15 years ago. Most terminals do not  
5 have an appointment system and have no idea how  
6 many trucks will show up on any given day or any  
7 given time. Not enough land or space to have a  
8 wield operation. In the case of New York, a  
9 political entity that decides how many  
10 longshoreman can be hired as well as who can be  
11 hired.

12 Steamship lines in the chassis business,  
13 their customers are stream suppliers who are  
14 historically unprofitable when the only people  
15 paying your bills are on the verge of bankruptcy  
16 most weeks, most likely your fees are getting  
17 squeezed as a result. Electronic log for trucks  
18 now also greatly reduces the amount of time a  
19 truck driver can drive; I think perhaps we should  
20 work in an exception for a local port driver.

21 Let's take a look at what has worked to  
22 improve terminal efficiency and cost reduction.

1       The appointment system at global terminals has  
2       been fantastic. Very well done, they rolled it  
3       out right; they did all the preliminary work  
4       fantastically, they had everybody involved and  
5       they did it in very small steps; huge, huge  
6       success.

7               Getting the government out to determine  
8       how many employees are needed to run a terminal.  
9       Governor Christie just signed the bill and  
10      hopefully New York does the same. As I said  
11      eliminating a segment of the electronic logs to  
12      allow local port drivers to possibly go beyond the  
13      bigger mandate. While infrastructure is important  
14      to the health of any port system, reducing the  
15      rents paid to that the NTO can put more of their  
16      own capital work as they see fit and not have to  
17      rely on demurrage and detention profit center.  
18      While the demurrage system is needed to keep the  
19      needed space open there are times when common  
20      sense needs to justify this and not a calendar.

21              Yeah, I wish my trucker could get in and  
22      out of terminal in 30 minutes and I never saw a

1 per diem or demurrage bill again. Before we  
2 regulate MTOs and we know operation of what we can  
3 do to help them, we all need to look at this  
4 through their lenses as well. I see that my  
5 things almost up, but anyway I'll make this quick.

6 What's not so clear is a way to make the  
7 steamship lines profitable. I'm not a person  
8 who's in favor of regulations nor am I a fan of  
9 monopolistic price fixing. Would it be nice if the  
10 steamship lines started becoming profitable and  
11 charge proper amounts evenly throughout the year  
12 in the United States. Right now it would cost you  
13 more money to truck a container to Chicago to  
14 North Jersey than it would to move a container  
15 from Shanghai to New York. I think there's a  
16 problem in that.

17 Especially now we have the elimination  
18 of trying to import scrap metal and scrap  
19 plastics. It's going to reduce the small amounts  
20 of stuff that we do export, that's very quickly  
21 evaporating so that's going to make the steamship  
22 lines even more unprofitable.



1                   Just real quickly, January 1, 2017  
2                   through September 30, 2017 there was 1,451,000  
3                   TEU's imported into New York, 581,000 export  
4                   TEU's, and 831,000 empty TEU's. We're exporting  
5                   empty containers and we're exporting product. I  
6                   think that's another fundamental problem for the  
7                   industry and for our country, but we'll get to  
8                   that later. Thank you.

9                   MR. DE JONG: My name is Franz De Jong.  
10                  I am the President of R1 International. I'm also  
11                  the President of the Rubber Trade Association of  
12                  North America. I deal solely in natural rubber.  
13                  You may not know it but the tires that you drive  
14                  around in in your car still have to be -- 33  
15                  percent of that rubber in that tire has to come  
16                  from a tree. We bring that stuff in. Natural  
17                  rubber has always been a strategic defense  
18                  material as well as an integral and inelastic  
19                  component of numerous manufactured goods.

20                  I've read both sides of these arguments  
21                  here and no doubt we have two sides. On one side  
22                  we have the importers and exporters, who in my

1 mind clearly represent the U.S. Economy because  
2 after all it is the importers and exporters who  
3 create and represent the demand side for port  
4 services.

5 On the other hand we have the MTOs and  
6 the steamship companies who supply the services  
7 and the expertise necessary to meet the demand for  
8 the importers and exporters. And you the FMC has  
9 to work with all of us and I, as my name shows,  
10 I'm obviously of Dutch descent and I was always  
11 told that we come from a very small country and we  
12 have work with everyone and it is with that intent  
13 that I came here.

14 So the FMC mission is actually to ensure  
15 a competitive and reliable international ocean  
16 supply system, which comes from the MTO's and the  
17 steamship companies. And that supports the U.S.  
18 economy and it protects the public from unfair and  
19 deceptive practices and I hope to present some  
20 insight and possible solutions to the current  
21 seemingly stalemate here that we have from common  
22 sense and a sense of patriotism. From the FMC's

1 own mandates to protect competition and integrity  
2 for America's supply chain and finally from a pure  
3 economic point of view because that's what I  
4 studied when I went to school.

5 First I'll tell you about my specific  
6 grievance. My company imported some 5 containers  
7 of natural rubber, about 100 tons worth of product  
8 from Guatemala using an NVOCC and ultimately  
9 shipping on MSC lines. We paid about \$6,000 for  
10 the use of those containers including about a  
11 3-week voyage time, meaning the drayage expense  
12 from Guatemala to the Port of Norfolk.

13 These containers were pulled over for a  
14 routine random customs patrol x-ray examination of  
15 our cargos, which we never have any objections to  
16 and we actually paid for an intensive examination,  
17 it cost us \$2,500. I think this is part of our  
18 patriotic duty in complying with our Boarder  
19 Patrol and Department of Homeland Security's  
20 efforts in the War Against Terror. Examination  
21 went 7 days beyond our 4 day container free time  
22 and then MSC detained our cargos, would not

1 release them while threatening to pile on  
2 additional demurrage, I'm sure you've heard all  
3 this, until we paid \$10,000 in detention and  
4 demurrage fees.

5 I complained to the Port of Norfolk.  
6 They told me, as you've heard numerous times in  
7 these discussions, the steamship company is our  
8 customer and you are the customer of the steamship  
9 company. And I thought about that and let me give  
10 you an analogy; you want to take a train ride from  
11 here to New York. How many choices do you have?  
12 One. Do you want to take rubber to Abijan to  
13 Norfolk? You might have two choices. Have you  
14 ever seen the back of the bill of lading of a  
15 steamship company; of a railroad company?  
16 Basically they can bump the cars, wreck your  
17 cargo, you could open the doors and it's a  
18 complete mess, and it's your fault.

19 Likewise it's the same with the  
20 steamship companies. You have no recourse, you  
21 have to remember as a lot of people said here  
22 before, that the steamship companies are having a

1 tough time and as a result they've formed all  
2 these alliances. What you have out there is an  
3 oligopoly. You don't have a lot of choice. If  
4 you want to go from here to there, as I said, your  
5 choices are limited.

6           Anyway, let me go on from here. So you  
7 have to ask yourself the question, why would MSC,  
8 a steamship company with whom our 120 person  
9 global company does have a long-term supply  
10 contract with MSC, why would they ding us for  
11 \$10,000 for 7 days demurrage? Beyond the allotted  
12 free time, while I was complying with the War on  
13 Terror? Why would my supplier and my customer  
14 relationship be allowed to fall a part like that?  
15 Why do they do it? And the answer is because they  
16 can.

17           And this is why you are here, the FMC,  
18 because railroads need to be regulated, steamships  
19 need to be regulated. And what I've seen in this  
20 business is I think, and every single MTO is as  
21 we've seen, they all are different, my particular  
22 grief is the Port of Norfolk, but I actually like

1 the Port of Norfolk, we are the number 2 user of  
2 the barge service that goes from Norfolk to  
3 Richmond and so we're actually part of the  
4 solution to limit the congestion in Norfolk,  
5 that's why they have the barge service. So get  
6 along with the people of Norfolk, but they tell me  
7 that there's nothing that they can do. That's  
8 wrong.

9 And the reason it's wrong is because we  
10 have these operating agreements between the MTO's  
11 and the steamship company, clearly. And you guys  
12 are supposed to be looking over those agreements  
13 and I think several years ago you decided that  
14 they didn't need to go public. I can't get access  
15 to it, but clearly in that agreement there must be  
16 some kind of writing that would prevent what  
17 happened in my case, which is profiteering on the  
18 War on Terror.

19 Now, earlier we brought up this issue  
20 about compensatory charges versus punitive. Well,  
21 I have a couple letters from the Port of Norfolk  
22 because I wrote a lot of letters to them and I got

1       them back and they said that basically we charge  
2       \$20 per container per day and we understand that  
3       the steamship companies charge about \$60 per  
4       container per day, seems reasonable.

5                   And I believe in the whole idea of  
6       demurrage because it is an incentive for importers  
7       to pick up containers, but it is clearly a  
8       disincentive for steamship companies to hurry up  
9       the process because it's a revenue item for them  
10      now, okay? Now in our case we were charged \$275 a  
11      day, and another thing you have to think about is  
12      America is a net importer. Unless I'm mistaken  
13      we're -- and Tim, I'm sorry --

14                   MR. SORBELLO: No worries.

15                   MR. DE JONG: Just said how many  
16      containers come in and how many go out. So we  
17      actually have a glut of containers so why are the  
18      steamship companies saying that their valuable  
19      cargo is being held up? It's only being held up  
20      so that they can charge demurrage and they don't  
21      have to store it at the port and otherwise pay a  
22      bill. So remember that.

1                   So from a common sense and patriotic  
2           viewpoint, how and why should American citizens  
3           and importers while representing and carrying  
4           essential imported raw material inputs to American  
5           manufacturing processes, and I bring stuff in to  
6           Tenneco, Goodyear, 3M, all kinds of big American  
7           companies, some of whom are exporters. And while  
8           complying with and paying for the compliance for  
9           U.S. inspection why should I be beholding and  
10          essentially high-jacked by foreign steamship  
11          companies operating at U.S. ports? How can MSC  
12          say that five containers are worth \$6,000 for 3  
13          weeks en route to the U.S. and all of a sudden  
14          we're at \$10,000 for 7 days in demurrage.

15                   Why should exporters be faced with a  
16          premium container option? I don't even know  
17          anything about this but I read it in your report;  
18          a premium container option concerning, in order to  
19          make containers available when there's a glut of  
20          them.

21                   CHAIRMAN KHOURI: So that we have time  
22          for questions can we --



1 MR. DE JONG: Am I run out 8 minutes?

2 CHAIRMAN KHOURI: Yes.

3 MR. DE JONG: I didn't even half of  
4 this.

5 COMMISSIONER MAFAFEI: That's why we  
6 have the record.

7 MR. DE JONG: Anyway, simple art of  
8 economics will tell you. There's a supply side  
9 and a demand side for the services the port. And  
10 one of the things that I think you should look at  
11 is the fact that, I went to all other ports and  
12 they say that the steamship company is their  
13 customer. Why is that? I pay all the duties that  
14 pay -- you know when we import stuff we pay  
15 merchandise processing and harbor maintenance,  
16 which essentially goes back to the ports.

17 So we're supplying a lot of the money  
18 that they use for their operating budget but we're  
19 not even in the picture. So I would ask you to  
20 consider the fact that certain ports, and I talked  
21 to the guy from Houston and he says importers and  
22 exporters are on their Board of Commissioners. I

1 looked at the Port of Norfolk for instance, there  
2 wasn't an importer, exporter anywhere on the Board  
3 of Commissioners; we need better representation.  
4 That would help us work better with everyone.  
5 Thank you.

6 CHAIRMAN KHOURI: Thank you. I'll tell  
7 you what, while I get my notes arranged  
8 Commissioner Dye would want to start this line of  
9 questioning?

10 COMMISSIONER DYE: Sure. On customer  
11 service and resolving disputes, who does that  
12 well?

13 MR. FRIEDMANN: Is your question which  
14 carrier's do well and which ports and so forth? I  
15 think the carriers that give some authority and  
16 take seriously the input from the customer service  
17 folks closest to the customer are the one's who do  
18 it best. I can give you an example. Two carrier,  
19 the Agriculture Transportation Coalition does an  
20 ocean carriers performance survey every year.

21 COMMISSIONER DYE: Yes.

22 MR. FRIEDMANN: And we get it from all

1 the exporters. And in the past there was carriers  
2 that had the best documentation systems tended to  
3 rate right at the top. An APL at one time, OCL,  
4 and so forth.

5 But in the last couple years, I think  
6 our results reflected the willingness of the  
7 carrier to listen to the people closest to the  
8 cargo at the ports and that was Hamburg Sud and  
9 Hapag Lloyd. And I can tell you that I know  
10 their local sales folks and customer service folks  
11 and they absolutely would disagree, I believe,  
12 with the idea that's being presented in some legal  
13 briefs.

14 And not only them, but all the carriers,  
15 I can mention all of them, Mersk also had some  
16 very good people up in Puget Sound who are very  
17 good at helping the customers who are trying to  
18 export and import through the tumultuous situation  
19 there at the Seattle and Tacoma terminals at the  
20 time, very close. I'm sure on the record nobody's  
21 going to speak but I can tell you I can find  
22 people at every carrier who believe that there

1 needs to be some way for higher management all the  
2 way up to Europe and Asia and so forth to  
3 understand the realities of what's happening at  
4 our ports from time to time.

5 And so whether it's this proposal or  
6 another proposal or some other initiative by this  
7 Commission, you need to help those people at those  
8 carriers and all those carriers who want to  
9 maintain the relationship in a reasonable fashion  
10 with their customers, import and export.

11 COMMISSIONER DYE: Should the system be  
12 simpler along the lines that I hear it's  
13 administered in European imports for example?

14 MR. DE JONG: First, I'd like to say  
15 something bout the last question you just said.

16 COMMISSIONER DYE: Okay, please do.

17 MR. DE JONG: Because I think most of  
18 the steamship companies are good guys but there  
19 are a few rogue candidates out there, I mentioned  
20 one. I really haven't had any problems other than  
21 this one particular one, which was so egregious  
22 that that's the only reason I came here.

1 COMMISSIONER DYE: That's fair.

2 MR. DE JONG: But I figured if this can  
3 happen to me for complying on the War on Terror  
4 and the only reason they did it is because they  
5 can. And so somebody has to slap their wrist.

6 MR. AVANZATO: And conversely, you  
7 mentioned the War on Terror, one of the biggest  
8 farce of the entire process is that necessity to  
9 have these AES number filed a week before the  
10 cargo cuts off at the pier this Friday, but today  
11 is a Tuesday. They need my documents today.

12 COMMISSIONER DYE: Yes.

13 MR. AVANZATO: I haven't even pulled a  
14 container out yet but I have to file this AES  
15 number.

16 COMMISSIONER DYE: Right.

17 MR. AVANZATO: Which, and again, they  
18 use a guise of port security for it, which is  
19 nonsense. I could type in anything right now into  
20 the AES system. I could say that I was shipping  
21 Judge Ito dolls whatever, and it's going to spit a  
22 number back out at me. And again, who's going to

1 be exporting a bomb out of the country?

2 MR. FRIEDMANN: Tim, let me say, that I  
3 agree 100 percent we've been working on that but  
4 that is under the Department of Homeland Security  
5 and Customs and Boarder Protection and I'd love  
6 the Commission to jump into that one too but I  
7 doubt you are going to take on CBP, that's really  
8 a --

9 MR. AVANZATO: Okay, I appreciate that  
10 and I'll make it very quick then. But the  
11 steamship lines have made export documentation a  
12 profit center so you have to submit your  
13 documents, which are going to be false because you  
14 haven't loaded the cargo yet, you haven't pulled a  
15 container out yet, because then you have to revise  
16 them. And now I'm in a legal dispute with which  
17 I'll probably write you guys a letter on very  
18 shortly about, so in order for me to revise those  
19 documents I have to pay, which sorts out to like  
20 \$25, then they figure out hey we're pretty good at  
21 this, now --

22 COMMISSIONER DYE: Yes, along those

1 lines and this is for all of you, if you can,  
2 especially for export, if you can provide me with  
3 the types of problems, whether it's inspections of  
4 various types by the government, or paperwork, or  
5 problems that showed up causing demurrage  
6 overcharges.

7 MR. FRIEDMANN: This is a very odd  
8 situation that you're faced with because if were  
9 to read the briefs, and you're going to hear the  
10 testimony tomorrow, it's just black and white,  
11 that's a terrible idea don't pursue this proposal  
12 that was submitted by the petitioners, you know,  
13 forget it. But like VGM many of the carriers,  
14 many of the terminal operators, and many of the  
15 port authorities, we've heard a lot of these  
16 several times already today know that that's  
17 wrong. That testimony you're going to hear  
18 tomorrow or that you're reading --

19 COMMISSIONER DYE: Right.

20 MR. FRIEDMANN: Does not really reflect

21 --

22 COMMISSIONER DYE: Well, they'll be up

1 here to we'll hear what they have to say.

2 MR. FRIEDMANN: Yes, what's actually  
3 going on. So that's why I say, I think in this  
4 matter some guidance is appropriate and I bet you  
5 if we could find 6 people, I could identify 6  
6 people and we could sit together and have a  
7 representative of a carrier, a terminal and so  
8 forth to come up with something.

9 COMMISSIONER DYE: Right.

10 MR. FRIEDMANN: Because keep in mind the  
11 exporters and importers do not want their cargo to  
12 be idle. The damage is huge when that cargo sits.  
13 So there doesn't have to be an incentive to move  
14 the cargo --

15 COMMISSIONER DYE: But if you could give  
16 me the worst problems --

17 MR. FRIEDMANN: Oh, yeah.

18 COMMISSIONER DYE: That cause demurrage  
19 hold ups, paperwork, government, whatever you've  
20 experienced.

21 MR. FRIEDMANN: And it wasn't mentioned  
22 earlier in the first panel but it shows you just



1       how much we need the Commission to step in and  
2       protect the shipping public. When did demurrage  
3       and detention or per diem charges assessed against  
4       a trucker, that brings all the cargo in, that  
5       trucker pays that right away or their locked out.  
6       They're locked out of the terminal, that's it.  
7       There's a gun at these guys heads.

8               COMMISSIONER DYE: Back to my question.  
9       Is that one of the worst problems for export?

10              MR. DE JONG: You can break the bank.  
11       You get charged \$1,000 if you don't get it out of  
12       there.

13              COMMISSIONER DYE: So what's the second  
14       worst problem, then? We'll get at it that way.

15              MR. SORBELLO: May I? The Port of  
16       Philadelphia, let me just start with the terminal.  
17       Exceptional, I mean there's probably not a better  
18       terminal than Philadelphia so I just want to say  
19       kudos to that. And you asked about customer  
20       service, you're probably looking at business  
21       owners here that pride themselves on customer  
22       service that's why we're successful, it's in part

1 with our ability to serve our customers.

2 It's probably average at best with the  
3 shipping lines, some are better than others, for  
4 example this past week or whatever it was, we had  
5 a little snowstorm. Some were receptive, some  
6 were absolutely shutout, we're not giving you an  
7 extra day. Trucks had a dismal time trying to get  
8 into the port, trying to get around containers.  
9 Thankfully we were able to get them out, but we  
10 heard some problems.

11 One other problem is their billing  
12 system. If there is a problem with per diems or  
13 demurrage, I don't know if you guys have seen  
14 this, it may be 2,3,4 months before you get the  
15 actual invoice and then you have to go back and  
16 try to figure it out. In the meantime, somebody  
17 said you have a gun to your head, in fact their  
18 invoices are wrong half the time. You better not  
19 just pay them; you better go through and look at  
20 them, the steamship companies.

21 MR. DE JONG: It is the steamship  
22 companies, it's the MTOs, and I brought up Norfolk

1       and they were very helpful, they were very nice,  
2       they really don't think that there's anything they  
3       can do, although I disagree because in the  
4       operating agreement the language could be such it  
5       could be put right in the operating agreement  
6       because that sets the environment in which the  
7       steamship can operate.

8               COMMISSIONER DYE: Okay. Thank you.

9               MR. DE JONG: Am I right?

10              COMMISSIONER DYE: Thank you.

11              MR. DE JONG: That's your solution.

12              COMMISSIONER DYE: Thank you.

13              MR. HUGHES: If I may, one of the things  
14       that's being overlooked here in general I think is  
15       we've got several large, medium to large importers  
16       and exporters. You're talking people that are  
17       bringing in 2,000, 4,000, 6,000 containers, what  
18       have you, or the Wal-Marts of the world, 20,000  
19       containers, what it may be. These are companies  
20       that have various ranges of negotiating power,  
21       which as we've heard is just only so much. What I  
22       think we're missing is the really small importers.

1       The guys that are bringing in 20 containers a  
2       year, they've got 0 leverage. They've got 0  
3       leverage on every single level to try to mitigate  
4       these types of issues. Nor are they educated as  
5       to how they could.

6               As I said before CADRS helps, my former  
7       company that I worked for get some remediation on  
8       our demurrage that to this day is still unfair,  
9       the demurrage we were charged, but these little  
10      guys don't know this. And the small importers  
11      need to be protected just as much as the Wal-Marts  
12      of the world or the Central Parts of the Lanca's  
13      or whoever and I'm afraid we're missing this point  
14      because if we don't also protect the entire range  
15      of importers, we're really not doing a great job.

16             I mean, the Auto Care Association has  
17      every size customer that you can imagine importing  
18      and exporting, they only protect you from unfair  
19      and unreasonable practices like this.

20             CHAIRMAN KHOURI: And if I can in just a  
21      brief way, I appreciate the wisdom having been in  
22      the room when the 84 Act was written -- 1984, not

1 the 16.

2 MR. FRIEDMANN: Maybe there should have  
3 been more wisdom in the room, frankly but --

4 CHAIRMAN KHOURI: And I know you would  
5 concede the amendments to the Act were meant to  
6 bring much more freedom of contract and a  
7 withdrawal of government intervention. And there  
8 I think there has been in a number of commercial  
9 aspects, great progress and I think that the fact  
10 that everyone has testified to that there are wide  
11 disparities; good ports, Philadelphia.

12 I see my friend Chairman Cordero, I'll  
13 see him here today but -- Long Beach and their  
14 particular position on how to handle free time,  
15 these government inspections, et cetera. But  
16 here's what we wrestle with and again not to be  
17 determinative but if the FMC can, and this is not  
18 a matter of strictly of authority, some of it is  
19 wisdom, so if we can order the terms to be  
20 homogenized, made the same, in terms of free time  
21 demurrage well does that then further open the  
22 door to, how about liability provisions?

1                   What insurance provisions above and  
2           beyond cogs of issues? And before you know it,  
3           we're going to be in to rate differentials between  
4           a big box shipper and a small shipper; is that  
5           fair? And so I'm just saying that these are  
6           things that we wrestle with as to, do we be very  
7           careful as to what we impose on the shipping  
8           public, when to say and this is going to be a  
9           common position for all terminals. So again, not  
10          trying to be determinative at this point, but  
11          there are these policy issues that we, I think  
12          quite appropriately, wrestle with and struggle  
13          with and where is that balance?

14                 MR. FRIEDMANN: I think you, this  
15          Commission, has already demonstrated that you can  
16          shoot with a rifle shot. You know, when the  
17          congestion was really bad, there was talk that  
18          ocean carriers were going to impose a congestion  
19          surcharge. So all that pork was going down to  
20          \$25,000 and just being destroyed and then the  
21          carriers were going to impost congestion surcharge  
22          on the port exporter, right?

1           You all stepped in and, you know however  
2    you want to approach your responsibility is up to  
3    you, but that was some conversations, I believe  
4    was using the bully palpaté but not in a public  
5    way, not in a formal way, not with legal documents  
6    back and forth about whether you have the  
7    authority or not, but some conversation basically  
8    not don't do this, it's unreasonable, and it  
9    didn't happen. Kudos to all of you for doing  
10   that, that did not mean that there was a slippery  
11   slope and thereafter you were going to review  
12   every single surcharge and you didn't, that was a  
13   rifle shot.

14           And the second thing is --

15           CHAIRMAN KHOURI: I neither admit nor  
16   deny as to having those conversations with  
17   shipping executives.

18           MR. FRIEDMANN: It may have all been  
19   hearsay or you know --

20           CHAIRMAN KHOURI: My door may have been  
21   closed on occasion with people inside.

22           MR. FRIEDMANN: Okay, good. I said, you

1 all, I didn't say anyone specifically here.

2 CHAIRMAN KHOURI: Good southern boy.

3 MR. FRIEDMANN: Yes. The other element  
4 is, when you're talking about one size fits all  
5 for all terminals, you can do that if that one  
6 size is big enough. In other words, if you're  
7 telling everyone to wear size nine and a half  
8 shoes that's a problem, but if you tell everyone  
9 that you have wear shoes, you pick the size and  
10 kind and so forth, then it's less of a problem.  
11 And I think this petition is on that broader one  
12 here. It's a broad direction without the  
13 specificity, which can be developed by negotiation  
14 or otherwise for each port within the scope of  
15 this broader petition.

16 CHAIRMAN KHOURI: Commissioner Maffei.

17 COMMISSIONER MAFAFEI: Thank you very  
18 much Mr. Chairman and thank you to the witnesses  
19 on this panel. So it's been mentioned by the  
20 previous panel and many of you mentioned how the  
21 charges, detention and demurrage, are being used  
22 as a revenue stream, I think Mr. Sorbelloo



1 specifically asked, maybe rhetorically, should it  
2 be a revenue stream of for the carriers? And I'll  
3 ask Mr. Friedmann and anyone else who wants so, is  
4 it inherently unreasonable for the carriers to use  
5 these as revenue streams? Is that part of it?  
6 And really anybody on the panel --

7 MR. AVANZATO: Well, you know listen,  
8 nobody wakes up in the morning and wants to lose  
9 money and there is a certain cost associated with  
10 them --

11 COMMISSIONER MAFAFEI: By revenue  
12 stream, I mean your profits.

13 MR. AVANZATO: Yeah, I think it's out of  
14 control. It's not unreasonable of them to charge  
15 for it, and it's not unreasonable for them to make  
16 some money off of it. But when you have, let's  
17 just say for arguments sake, you bring a container  
18 in from Shanghai to New York and will call in 30  
19 days. We'll call the ocean freight rate on the  
20 spot market was about \$2,000 for much of the year  
21 -- about \$60 a day, let's just say or whatever it  
22 is.

1                   When it's on the water and they're  
2           getting revenue for that at \$60 a day, why after  
3           it being off a ship and in my possession after 4  
4           days does it become worth \$150 a day? I think  
5           that's, you know, above and beyond. You're being  
6           penalized at that point -- I pay \$3.20 a day, so  
7           anybody that has chassis problems, go lease them  
8           on your own and I'll be happy to give you a phone  
9           number. So have that out, if I'm paying \$3.20 a  
10          day for 5 of them, steam supplier is leasing  
11          10,000 of them --

12                   COMMISSIONER MAFAFEI: No, no, no. I  
13          get it.

14                   MR. AVANZATO: No, I know but let me  
15          just finish this math here. So they're charging  
16          \$30 a day for a chassis so that's marking up  
17          whatever that's doable almost, but a container,  
18          but a container, you're probably leasing a  
19          container you're probably paying at least 50 cents  
20          a day.

21                   COMMISSIONER MAFAFEI: What I'm trying  
22          to get to is where we trigger the definition of

1 unreasonable. I mean the Shipping Act has this  
2 word unreasonable, where we get to that. And what  
3 I'm trying to do is, is it linked to it being a  
4 profits center for the carriers or not. And it  
5 sounds to me from what you're saying is, is that  
6 it doesn't matter - just because the carrier might  
7 be making a profit, well that's okay in and of  
8 itself as long as it's not an unreasonable amount  
9 their charging.

10 MR. AVANZATO: Okay, say you like  
11 pepperoni, you order a pizza, it's \$10, when it  
12 you order pepperoni and it shows up at your door,  
13 it's \$50.

14 COMMISSIONER MAFAFEI: I am Italian, Mr.  
15 Avanzato --

16 MR. AVANZATO: Is that unreasonable? I  
17 think that's unreasonable. But again --

18 COMMISSIONER MAFAFEI: We are talking  
19 about necessities in my household.

20 MR. AVANZATO: There you go.

21 MR. FRIEDMANN: I think the reason we're  
22 here today is because is that something that's

1       within the discretion of the carriers and the  
2       terminals has been abused. If they hadn't abused  
3       it, we wouldn't be here. In other words, if it's  
4       \$250 is the rate for hay from LA Long Beach to  
5       China- based ports and 5 days of demurrage is \$925  
6       to the carrier terminal it just feels wrong  
7       doesn't it? And that's to you. But I think  
8       that's one of those things that why this is weird.  
9       The carriers and terminals can solve this, they  
10      know what's reasonable and what's not.

11               And I know that there are carriers all  
12      the way up to the President of North America and  
13      above who know that some of these things that they  
14      were charging them were unreasonable. So they  
15      have police themselves, otherwise then the sheriff  
16      comes in.

17               COMMISSIONER MAFAFEI: Right, okay. Let  
18      me ask Mr. De Jong in particular, I sort of asked  
19      this question earlier, but in a more general way  
20      and you had a very specific example and we  
21      appreciate you bringing that example to us. But  
22      let me ask you this, just on the surface just

1 looking at it, I would have no idea, but I think  
2 you could certainly make a very credible argument  
3 that what would happen there is unreasonable.

4 Well, that's already against 10(d)1 of the  
5 Shipping Act so why not bring a case, and I do of  
6 course, I have the same follow up question --

7 MR. DE JONG: What's the statue of  
8 limitations? I'm going to bring it up.

9 COMMISSIONER MAFAFEI: I don't think  
10 there is one. Is there one on --

11 MR. DE JONG: You know, I'm like  
12 everyone else. It's such a nuisance and I don't  
13 want to get a lawyer and I don't want to go  
14 through all --

15 COMMISSIONER MAFAFEI: And that's fair.

16 MR. DE JONG: And I actually thought if  
17 I talked to the steamship company, they would be  
18 reasonable.

19 COMMISSIONER MAFAFEI: I'm sorry. Let  
20 me ask this question to you so you can answer and  
21 answer any other question that you want to. So  
22 let's say in theory we pass, we offer some

1 guidance, which is what the petition is asking.  
2 And they don't follow that guidance. In order to  
3 have set effect you still have to go through the  
4 same process and hire the same lawyers, why would  
5 that be less of a burden than under what  
6 currently?

7 In other words, I understand why it  
8 could be burden to go through that process, but  
9 why would it be different if we offered some sort  
10 of guidance and then they choose not to do it.  
11 You mentioned, well they do it because they can,  
12 well if you're not willing to file a case, and I  
13 don't mean to pick on just you, I mean this is  
14 throughout --

15 MR. DE JONG: It's a good question. The  
16 question is, do you have the authority, will  
17 people listen to you?

18 COMMISSIONER MAFAFEI: Well, see we  
19 don't have our own police force. It's not like we  
20 can send people down there. If people don't file  
21 a case we cannot enforce.

22 MR. DE JONG: I'm part of the guilty

1 party; I didn't file a case.

2 COMMISSIONER MAFAFEI: We have  
3 enforcement, we can investigate.

4 MR. DE JONG: Here's another one. I am  
5 actually CTPAT certified, I spent a lot of money  
6 to become CTPAT certified and I believe that the  
7 steamship companies also have to be CTPAT  
8 certified. And it means Custom Trade Partnership  
9 Against Terror. So we're all in the same  
10 partnership, my container gets pulled over for the  
11 War on Terror, why is my partner kicking me in the  
12 butt? Why is my cargo worth less than his  
13 container?

14 MR. FRIEDMANN: Commissioner, to answer  
15 your question. One of the best things the  
16 Commission has done in the last 15 20 years is  
17 create a mechanism, is to recognize that the  
18 barrier to getting justice here, if you will, is  
19 very, very high for the shipping public. Which  
20 doesn't retain lawyers full-time to bring cases  
21 here at the Commission and so forth.

22 To bring a case, a couple hundred

1       thousand dollars by the time you're through and  
2       there's no likelihood that you can predict that  
3       you're going to be successful. It may be  
4       depending if they follow the precedent of a 1949  
5       case, that doesn't sell very well all around the  
6       country for a company that is trying to be  
7       competitive globally. And have \$200,000 maybe  
8       more plus maybe a full-time person working on it  
9       internally, don't have it.

10               So you all formed CADRS, and CADRS is a  
11       mechanism that recognized that there is that  
12       barrier of going through and bringing a case. And  
13       then the CADRS is extremely important, I wish it  
14       had more resources. We have conveyed that to  
15       Capitol Hill; that they should get more resources  
16       because they are the gateway for you to get the  
17       information you need to do your job. It's a  
18       realistically one of the few, if only gateways you  
19       have to get that information.

20               COMMISSIONER MAFAFEI: I appreciate that  
21       and I know Mr. Hughes mentioned that he felt few  
22       in the industry were even aware that we had a



1 CADRS department and if you would answer it for  
2 the record, not orally now, but any ideas you have  
3 on what we could do to help publicize that in the  
4 appropriate communities would be appreciated. For  
5 now you'll back the balance of my non-existent  
6 time.

7 CHAIRMAN KHOURI: Thank you. I'm going  
8 to ask one more question and then take a break and  
9 see if we can get our next panel in. One, Mr.  
10 Friedmann, I'm going to look to our general  
11 counsel to help with this and be posted on record.  
12 My memory, as you know the issue on legal fees  
13 changed recently the year before last, my memory  
14 on fee petitions per party is far less than  
15 \$200,000 but I'm just going - without going - is  
16 I'm going to ask to see if we can't, I think those  
17 are for public record, is to see what our recent,  
18 over the last few years, what those fee petitions  
19 were and if they confirm yours. We've had some  
20 very long running ones that may get into a 6  
21 figure but - any event.

22 Let me ask my last question, and this is

1       one that sort of goes to a core of so many  
2       people's frustration, my Admiralty Horn book,  
3       Gilmore and Black, is probably older - I know I  
4       don't look this old, but I am, is older than  
5       probably half the people in this room and the law  
6       on liens is older than all of the panel here,  
7       added up, taken together. And it simply says it's  
8       a possessory lien and once you release the cargo,  
9       you release the liens. And that being right or  
10      wrong as to whether the charges are fair is that  
11      is an adamant as to why they're not releasing  
12      cargo until those possessory liens are paid.

13               With that in mind, are there some  
14      alternate ways to say I've got a dispute, we're  
15      going to go ahead and release the cargo, maintain  
16      some legal status, but expedite the release of the  
17      cargo and we'll settle the other stuff and not  
18      have you fellows having to go deep into your  
19      reserve funds or lines of credit or anything else.  
20      Are there other solutions to handle that part of  
21      the frustration?

22               MR. AVANZATO: I wish there was. I mean

1 sometimes there's gray areas, and again, I think  
2 we all agree that we want to work with the  
3 steamship lines, and again if the fees were not  
4 exorbitant. We are not necessarily opposed to  
5 writing a check sometimes but the problem is, as  
6 my friend out here stated, \$250 to move a load a  
7 hay and then \$950 in demurrage it's usually not  
8 chump change when it comes down to these things.  
9 And it seems steamship lines are great at,  
10 especially the terminal operators, if you're in  
11 demurrage there's rarely ever a scenario where  
12 they said come pick it up and we'll talk about it  
13 tomorrow. You got to pay --

14 MR. DE JONG: Conditional release would  
15 be great because that way the onus isn't 100  
16 percent on the person picking it up. Now the  
17 steamship company also has to think about getting  
18 a lawyer and a much greater chance for settlement  
19 and that's really what you would like.

20 MR. AVANZATO: Sure, and in particular,  
21 in my case I'm being sued for \$30,000 in detention  
22 and demurrage that I shouldn't have to pay, I'm

1 not going to get into the specifics but they filed  
2 it in Federal Court, now I have to get a lawyer.  
3 Then I have to say to myself, again in the  
4 lawsuit, if I lose I have to pay their legal fees.  
5 Well you can run through the \$30,000. So what do  
6 I do, do I just pay the 30 grand because if you  
7 read the bill of lading or service contract,  
8 everything is against you. So I could fight it,  
9 it's a tough call. I have a collection jar out  
10 front it anyone wants to contribute, too by the  
11 way.

12 MR. FRIEDMANN: And there's another  
13 element --

14 MR. AVANZATO: You know, I don't think  
15 so.

16 CHAIRMAN KHOURI: I assume that the  
17 terms of the contract --

18 MR. AVANZATO: I would be lying if I  
19 said that I knew for certain, but I'll find out.

20 MR. FRIEDMANN: You know, there's  
21 another element. If there were 25 ocean carriers  
22 calling and you could pick and choose. If

1       somebody treated you miserably and so forth, but  
2       now we're down to about 11 carrier and 3 alliances  
3       and so forth. So as you mentioned, for the  
4       product coming from Guatemala, you've got 2  
5       carriers, right?

6               One of the things you could do to answer  
7       your question Mr. Khouri is prohibit the terminals  
8       from enforcing, if you will, the collection of  
9       payment of demurrage and detention in a period  
10      that's what it is today, in a few days or locking  
11      people out.

12             In other words, conditional release  
13      could be, but give them 60 days, what have you so  
14      that there will be an opportunity for that trucker  
15      to keep moving the import or export cargo in and  
16      out of that terminal without being locked out.

17             And that's where the rubber hits the  
18      road on a lot of these issues. That's why we have  
19      Ag TC truckers as members because whether it's a  
20      family walnut grower in Modesto or whether, well  
21      you had Wal-Mart there, everybody is subject to  
22      draconian results if they don't comply and simply

1 accept what the ocean carrier and terminal  
2 operator are imposing. They get locked out.

3 MR. HUGHES: And if I may, during the  
4 West Coast Labor negotiations, somebody I was  
5 working for had serious issues with detention and  
6 demurrage and rather than hire lawyers, I came  
7 down here and filed with CADRS after I found out  
8 about CADRS. But even a that process is so long,  
9 some of the carriers we were able to settle with  
10 in 3 to 6 months, one of the carriers, we didn't  
11 settle with and it was one of the ones that you  
12 said was so good earlier, it took us a year.

13 And then once we settled on a number, it  
14 took them another 6 months before they even gave  
15 it to us as a credit. Now a big company that may  
16 have lots of cash reserves can deal with that.  
17 But a small company, a small importer, that could  
18 drive them right out of business. And the amount  
19 of time for myself or any executive in a company  
20 that chased down and followed through with this,  
21 this is expensive all on it's own.

22 So you know, you could set up a

1 mechanism that says okay you can take your cargo,  
2 but then you are probably going to have processes  
3 that are going to take much or even years to  
4 settle. And how many times, how many different  
5 cases are you going to have?

6 MR. SORBELLO: How about arbitration;  
7 settlement by arbitration? And we set up an  
8 arbitration panel. Even a conditional release  
9 settlement and everyone has to agree to  
10 arbitration court. Well, it's cheaper than going  
11 to the lawyers.

12 MR. FRIEDMANN: My phone's lighting up  
13 from all over the country. I'm getting texts  
14 saying I mentioned the right carriers or I  
15 mentioned the wrong carriers. I'm getting  
16 examples in here. So there are hundreds of people  
17 that care about what you're doing here in the  
18 hinterland of this country.

19 CHAIRMAN KHOURI: Well, let me do this.  
20 We're going to take a break. Come back promptly  
21 at 2:30 for the intermediary panel. If I may,  
22 Thomas Adamski, is he here? Needs to go on the

158

1 drayage panel tomorrow. Thomas J. Adamski. Not  
2 here. Okay, thank you. We'll be back at 2:30.  
3 (Recess)